

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

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Retail Access Optimization Initiative

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Docket No. N2011-1

REPLY BRIEF OF THE  
AMERICAN POSTAL WORKERS UNION, AFL-CIO  
(November 10, 2011)

On November 4, 2011, nine parties<sup>1</sup> including the American Postal Workers Union, AFL-CIO ("APWU")<sup>2</sup> filed initial briefs for the consideration of the Postal Regulatory Commission (hereinafter the "Commission" or "PRC") as it determines whether the United States Postal Service Retail Access Optimization (RAO) Initiative comports with the policies and requirements of Title 39. Of the initial briefs, only Valpak Direct Marketing Systems, Inc., and Valpak Dealers' Association, Inc. (hereinafter "Valpak") and the Postal Service assert that the RAO Initiative complies with Title 39. The remaining parties generally and persuasively contend, as does the APWU, that the RAO Initiative does not comply with the policies of Title 39 and instead violates several requirements of the Act.

Therefore, APWU submits this reply brief to address the arguments set forth by the Postal Service and ValPak. For the reasons expressed in our Initial Brief and explained more fully below, APWU submits that the arguments advanced by both Valpak and the Postal Service in support of the Initiative are without merit and the Commission should issue an advisory opinion that the RAO Initiative violates the policies of Title 39.

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<sup>1</sup> Initial Brief of the United States Postal Service; Initial Brief of the Public Representative; Initial Brief of the National League of Postmasters; National Association of Postmasters of the United States Initial Brief; Comments of the National Newspaper Association; Center for Study of Responsive Law Initial Brief; Association of Postal Lessors Initial Brief; and Initial Brief of Valpak Direct Marketing Systems, Inc., and Valpak Dealers' Association, Inc.

<sup>2</sup> Initial Brief APWU [Errata] (November 7, 2011)

**I. Valpak's Concern for the Financial Health of the Postal Service is Reasonable but Irrelevant to the Commission's Consideration of the RAO Initiative**

Valpak's brief focuses in large part on its belief that the financial condition of the Postal Service and the efficiency requirements of the Title 39 must be considered by the Commission and such consideration warrants an Advisory Opinion "recommending that the Postal Service proceed with its planned re-evaluation of retail facilities."<sup>3</sup> APWU does not deny the importance of the financial realities facing the Postal Service, nor do we believe that the Commission should ignore the provisions of Title 39 relating to efficiency and maintaining the financial health of the Postal Service. In fact, contrary to Valpak's assertions, consideration of these factors require a finding that the RAO Initiative fails to comply with the policies of Title 39.

Valpak's argument in support of the Initiative omits several important facts. First, the Postal Service has clearly stated numerous times that the point of the RAO Initiative is not to reduce costs. It specifically has failed to measure to any sufficient degree the cost savings that might be realized from this initiative. From what has been produced on the record, we know that the upper-bound savings estimate for the RAO Initiative if all of the facilities selected were closed (which we know will not occur) is \$200 million, merely three-tenths of one percent of the total operating expenses of the Postal Service. Clearly, this Initiative will not significantly alleviate the financial burden currently faced by the Postal Service.

Valpak's argument is misplaced for another reason. Valpak asserts that while Section 101(b) of Title 39 prevents closing a small post office "solely for operating at a deficit,"<sup>4</sup> "there is no bar to considering economic realities in this nature of service

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<sup>3</sup> VP p. 21.

<sup>4</sup> In its brief, Valpak submits that it would be reasonable to view the requirements of Section 101(b) as inoperative since the funding to support the "public service costs" incurred by providing service under this Section is no longer provided. Valpak Initial Brief at 16. The National League of Postmasters ably addressed this point in its brief, noting that "Congress did not eliminate or reduce in any way the Postal Service's obligation to provide the public service elements of providing the maximum degree of service to rural America, including operating rural post offices that are not self-sustaining. Nor did Congress eliminate the authorization for appropriation." NLP Initial Brief at 4. The Postal Service in fact voluntarily relinquished its right to this appropriation while continuing to uphold its mandate under Section 101(b).

docket, or even in the closing of a post office.”<sup>5</sup> Valpak goes on to state “uneconomic retail services, including but not limited to those post offices with a two hour earned workload, constitute what long has been the most expensive and inefficient way of providing citizens with access to retail postal services.”<sup>6</sup> Leaving aside the fact that there is no record evidence in support of this proposition, Valpak’s argument simply ignores the fundamental flaw of the Postal Service Initiative; the Postal Service did not target all of the facilities with two-earned hour workload (the number of facilities produced by applying only this criteria was deemed “unmanageable”<sup>7</sup>), the Postal Service also did not target all “inefficient” offices or all offices, including large offices, running a deficit. Instead, the Postal Service targeted offices with a revenue requirement of less than \$27,500 and two-earned hour workload. Application of these criteria led to 99% of the 2825 “low workload” Post Offices selected for study for possible closure being “small, rurally located and operating at a deficit.”<sup>8</sup> As APWU and several other parties have argued, this selection criterion is nothing more than a pretext for targeting for closure small offices operating at a deficit. Furthermore, there is no evidence that but for being identified by the RAO Initiative that any of these 2825 offices would be discontinued. This plainly violates Section 101(b)’s prohibition against closing small post offices “solely for operating at a deficit.”

Valpak also stresses the need for the Postal Service to have flexibility to modernize its network, to become more efficient in its provisions of services. However, as stressed by the APWU in our Initial Brief, despite the name, the Postal Service Retail Access Optimization Initiative is not designed to optimize retail access; it is not designed to optimize the location of postal facilities; it is not designed to make the postal network more efficient. The Postal Service has no intention to do anything but close facilities pursuant to RAO Initiative. There is no evidence that the Initiative will improve the network; all evidence provided demonstrates that the RAO Initiative will simply shrink the network, possibly in a discriminatory and inefficient manner.

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<sup>5</sup> Valpak Initial Brief at 5.

<sup>6</sup> Id.

<sup>7</sup> USPS Initial Brief at 6 n. 7.

<sup>8</sup> Public Representative Initial Brief at 9.

**II. Postal Service Position is Disingenuous and Not Supported by the Evidence in this Case**

**A. Contrary to the Postal Service's Unsupported Assertions, the RAO Initiative Violates Title 39**

As clearly explained in our Initial Brief, the RAO Initiative violates several provisions of Title 39, including Section 101(b) and Section 403(c). The Postal Service contends in its Initial Brief that the Initiative does not run afoul of these requirements. This argument is without merit.

**i. The Initiative Violates Section 101(b)**

First, the Postal Service states that the RAO Initiative does not violate Section 101(b) because it is structured not to do so, namely, “the fact that a small Post Office is ‘operating at a deficit’ is explicitly barred from being the determining factor in deciding whether to discontinue a given office.”<sup>9</sup> However, this argument ignores the fact that the criteria relied on by the Postal Service to select 2825 of the 3652 facilities for review for possible closure targets small facilities operating at a deficit. As detailed in our Initial Brief and in response to Valpak above, the requirements of less than \$27,500 in revenue and two-earned workload hours by design caused 99% of the facilities being studied in this category to be small offices in rural areas operating at a deficit. Furthermore, the Postal Service has failed to provide any evidence that these facilities would be closed but for their inclusion in this Initiative.

**ii. The Initiative Violates Section 403(c)**

The Postal Service also asserts that “[n]o basis exists for asserting that the RAO Initiative reflects the intent or will have the effect of unduly or unreasonably discriminating among mail users or granting an undue or unreasonable preference for any mail users, within the meaning of 39 U.S.C. § 403(c).”<sup>10</sup> The APWU has demonstrated through the record testimony of Witness Anita Morrison, that this assertion is simply unfounded.

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<sup>9</sup> USPS Initial Brief at 16.

<sup>10</sup> Id. at 17.

Witness Morrison examined the possible impact on vulnerable populations, including the elderly, low-income, households without cars and ethnic minorities where facilities currently on the list for possible discontinuance study closed. From this examination, Ms. Morrison made following findings regarding the Post Office closings that may result from being identified for discontinuance study through the RAO Initiative:

In Rural Areas:

- Fifty-seven percent of those rural areas with post offices being considered for closure have higher shares of low-income households than the average of the control group.
- In 4.3 percent of rural facility areas, the share of low-income households is more than double the average of the control group.
- One-third of the post offices being considered for closure are more than 10 miles from the nearest post office, and 1 out of 10 is more than 20 miles away. Seven post offices are more than 80 miles to the nearest post office.
- Higher levels of households with no vehicles correlate with low income levels. The 39 rural postal facility areas with an average of 20 percent or more of households with no vehicles have an average of 31.2 percent of households with incomes below \$20,000, 50 percent higher than the control group average.
- Within the candidates for potential closure, 8.5 percent of facility areas have a car-less rate double that of the control group, and 1.0 percent have a rate triple the control group average.
- Within the rural control group, the average facility area has a population that is 15.9 percent aged 65 and older. Of the rural areas impacted by proposed closures, the average is 16.4 percent of the population aged 65 and older.
- Ten post offices serve populations that range from one-third to one-half aged 65 and over, including Bluffton, Texas; Oysterville, Washington; Wiseman and Oakland, Arkansas; and Lehr, North Dakota.
- 80 of the affected rural facility areas have minority populations greater than two-thirds of the total population.<sup>11</sup>

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<sup>11</sup> APWU-T-1 at 8-13.

In Urban Areas:

- Urban areas served by postal facilities being considered for closure serve distinctly less affluent service areas than do postal facilities in the control group. The control group of urban postal facility areas has an average of 19.4 percent of households with incomes below \$20,000. Among urban areas with facilities being evaluated for closure, the average is 27.0 percent of households with incomes below \$20,000.
- More than 22 percent of urban facilities being studied for closure have averages more than double that of the control group station areas. Nineteen facility areas (2.9 percent) have triple the share of low-income households when compared to the control group average.
- In the urban area control group, the average facility area has 10.8 percent of its households with no vehicles. The areas surrounding the urban postal facilities being considered for closure have an average almost double that – 21.1 percent of households with no vehicles.
- In 44 facility areas (6.7 percent), at least one-half of resident households have no car.
- Urban facility areas show the greatest disparity relative to ethnicity. Close-in areas around the stations, branches and annexes being studied for closure have an average of 45.1 percent minority (non-white) population in contrast to the average of 26.3 percent of urban facility areas in the control group not being considered for closure.
- Nearly 42 percent of the urban facilities being considered for closure have minority populations more than double the average of the control group facility areas.
- Almost one-quarter of the residents of close-in areas surrounding postal facilities being considered for closure are at least 75 percent minorities.
- The percentage of minority population is 20 percent higher in areas surrounding declining-revenue stations than in the total inventory of urban facilities being considered for closure.<sup>12</sup>

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<sup>12</sup> APWU-T-1 at 14-19.

It is evident from these results that the facilities currently targeted for discontinuance study would have a disproportionate negative impact on certain users of the mail, namely low-income households, the elderly, minority and those households without vehicles. Ms. Morrison also noted that “almost 7 million households earning below \$30,000 per year—do not have a bank account.”<sup>13</sup> The unbanked are especially dependent on their post office for money orders, placing them at a decided disadvantage if their community post office were to close.

### **iii. Witness Morrison’s Findings are Valid**

The Postal Service has provided no evidence to counter Ms. Morrison’s findings. Instead, the Postal Service advances arguments as to the propriety of her study and her conclusions. As to the first point, the Postal Service argues that Ms. Morrison did not conduct the right “apples to apples” study. Specifically, the Postal Service states that Ms. Morrison should have “looked at how access to retail facilities is realized in communities that lack retail facilities compared to how customers might access retail services in communities that might soon lose their retail facility.”<sup>14</sup> However, Ms. Morrison designed her study to evaluate the RAO Initiative as a selection process to determine if it leads to bias in contravention to the mandates of Title 39. Thus it makes complete sense that Ms. Morrison chose to compare facilities that were selected under the RAO Initiative for discontinuance study with those that were not selected under the Initiatives criteria. This is a perfect apples to apples comparison, the Postal Services’ claims notwithstanding.

The Postal Service next laments Ms. Morrison’s conclusion, namely, that “from her perspective the Postal Service should not be allowed to address a business problem, diminishing and under-utilization of retail facilities, by selecting those very offices for examination of possible discontinuance, based upon a rather precise measure of low utilization.”<sup>15</sup> This is a rather strange argument since the purpose of Ms. Morrison’s study was to determine the validity of using a “precise measure of low utilization” and the impacts such a measurement might have on vulnerable postal

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<sup>13</sup> APWU-T-1 at 24-25.

<sup>14</sup> UPS Initial Brief at 70.

<sup>15</sup> USPS Initial Brief at 76.

customers. As detailed above, the fact that the measurement used by the RAO Initiative was based on low-utilization, hence low revenue, naturally resulted in a disproportionate share of low-income, minority and elderly populations having their postal facilities being studied for discontinuance and possible closure. This is contrary to the requirements of Section 403(c).

**iv. No Evidence that the Initiative Actually Addresses a Business Problem**

As for the argument that the RAO Initiative was designed to address a “business problem” this is simply not sustained by the record. The Postal Service relies on certain information to suggest that the number of retail facilities needs to be reduced. This includes “data showing a decline in retail customer visits,” that customers “can access a broad range of products, services and transactions through the public postal website [www.usps.com](http://www.usps.com) and that “nearly 3,600 Contract Postal Units provide a broad range of services.”<sup>16</sup> The Postal Service further contends that eighty-five percent of walk in retail transactions consist of postage purchases.”<sup>17</sup> However, none of this information is specific to rural areas. There is no evidence that rural customers have been largely turning to alternate access channels; the Postal Service specifically chose not to study this information. There is no evidence that rural customers are using the internet to access postal services in large numbers, again the Postal Service chose not to look at this. The only information on the record pertaining to rural internet use suggests that rural communities do not have the same access capability and quality of internet service as urban and suburban areas. With regard to the 3,600 CPUs, the Postal Service has provided no evidence that these facilities are in or even near rural communities slated for discontinuance study. In its brief, the Postal Service appears to acknowledge the limitations of alternate access in rural communities stating “[t]o the extent that alternate access channels are generally less concentrated and accessible in rural areas or small towns, such lesser levels of concentration and accessibility on a case-by-case basis would generally require that other factors weigh more heavily in support of a

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<sup>16</sup> USPS Initial Brief at 8.

<sup>17</sup> Id. at 9.



determination to discontinue a Post Office in a rural area or small town.”<sup>18</sup> However, nowhere in the record, or in the PO-101 is it stated that personnel studying rural or small town facilities for discontinuance are required to find other factors weighing more heavily in support of a discontinuance.

As noted, the Postal Service states that the given the change in customer behavior, including a decrease in retail customer visits<sup>19</sup> coupled with an increase in alternate access, the “objective of the RAO Initiative is to apply the USPS Handbook PO-101 discontinuances review process to evaluate a manageable number of facilities of varying types, within the postal retail network and see what the Initiative yields.”<sup>20</sup> While it is too early to tell exactly what the Initiative will yield, as discussed by Witness Morrison, it appears highly likely that a large portion of the facilities that are closed as a result of this initiative will be small, rural post offices with higher concentrations of low income and elderly customers. The Postal Service has done nothing to mitigate the fact that the RAO Initiative naturally results in the study and closure of facilities that provide services to a higher percentage of these vulnerable populations than the average facility, in violation of 39 U.S.C. §403(c).

If the Postal Service simply wanted to apply the PO-101 to a large number a facilities to see what would happen, it could have just as easily selected a “manageable” number of facilities across the postal network at random. This would have avoided any claims of violations of 101(b) or charges of unreasonable or undue discrimination. It would have also given the Postal Service experience with a wider variety of offices. The PO-101 would still have to be faithfully applied, to ensure that service levels are maintained before initiating a closing. This is a requirement no matter the facility; the Postal Service must know about the community, the population served by the postal facility and the needs of the customers in order to ensure that any proposed alternative meets their needs.

In its Initial Brief the Postal Service states for the first time that “the service changes that could result from implementation of the Retail Access Optimization Initiative are founded upon a rational plan for improving the nation’s postal system and

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<sup>18</sup> Id. at 10.

<sup>19</sup> Id. at 8.

<sup>20</sup> Id. at 10.

are the product of a proper balancing and consideration of pertinent objectives of title 39, United States Code.” The Postal Service continues “...there is every reason to expect the result of the Initiative to be a streamlined retail network comprised of postal facilities and alternate access channels of such character and in such locations as are necessary to provide effective and regular access to essential services at relative levels appropriate for urban and suburban areas as well as rural communities and small towns.” Yet there is nothing in the record that supports the claim that the Initiative will “improve the nation’s postal system or result in a streamlined retail network.

As explained above and at length in our Initial Brief, the RAO Initiative is not an optimizing plan; it is primarily a plan to close facilities in small towns and rural areas that are not self-sustaining. It might well be true that the Postal could improve retail access with fewer retail outlets should it place new outlets in strategic locations in lieu of old outlets. However, the Postal Service simply does not have the funds to do this. Therefore, it is only looking at closings. It offers the Village Post Office as a possible alternate access channel, yet the VPOs are unable to provide most of the services for which people would make a trip to the Postal Office. Moreover, there are currently only a few VPOs in place with only a couple dozen possibilities in the works. Clearly, the VPO is not going to be able to provide the alternate access the Postal Service had originally envisioned. If the Postal Service was truly interested in optimizing and streamlining its network while improving access, it should be looking at initiatives like those identified by Public Representative witnesses Klingenberg (PR-T-2) and Waters (PR-T-1). If this Initiative goes forward as designed, the Postal Service will end up with a smaller, less efficient network, with less retail access to customers that truly rely on the Postal Service. This Initiative will not produce much by way of cost savings and instead could fundamentally damage the Postal Service brand at a time when it can least afford it.

**v. The PRC's Advisory Opinion in N2009-1 Supports Finding the RAO Initiative Violates Section 403(c)**

The Postal Service argues that the RAO Initiative cannot be found to violate Section 403(c) of Title 39 because

“the narrowly focused SBOC Initiative was not deemed by the Commission to be unduly discriminatory against urban and suburban customers for its failure to include rural and small town Post Offices within its pool of retail facilities. The Commission did not conclude that there was undue or unreasonable discrimination or preference on the basis of a particular urban/suburban station/branch population demographic. Accordingly, it would seem less likely for such a claim to be substantiated when leveled against the Retail Access Optimization Initiative, which implicates a much more diverse pool of retail facility types spread among a wider variety of communities with varying demographic profiles in urban, suburban and rural areas and well as small town.”<sup>21</sup>

This argument is completely disingenuous and utterly without merit. First, the Postal Service misconstrues the Commission Advisory Opinion in Docket No. N2009-1. Nowhere in the decision did the Commission state that the SBOC Initiative was not unduly or unreasonably discriminatory. To the contrary, the Commission held

[T]he Commission finds the policies and procedures that the Postal Service currently is employing to carry out its Initiative require significant modifications to ensure the uniform provision of postal services in conformance with the policies of title 39 on a nationwide basis.<sup>22</sup>

More specifically the Commission stated

Criticisms of the Initiative concentrate on the limited protections afforded to customers, and the details of the process used to evaluate stations and branches to ensure provision of ready access to essential postal services nationwide in a nondiscriminatory manner. APWU and the Public Representative argue that because of flaws in these areas the Initiative does not comport with the policies of title 39.<sup>23</sup>

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The Commission addresses these criticisms in the following sections and recommends additions and modifications to the Initiative to ensure that the policies and procedures that the Postal Service employs will be consistent with

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<sup>21</sup> USPS Initial Brief at 17-18.

<sup>22</sup> PRC Advisory Opinion Docket No. N2009-1 at 35.

<sup>23</sup> Id. at 40.

the requirements of title 39. The Commission finds that the Initiative will be consistent with the requirements of title 39 if the Postal Service adopts these recommendations.<sup>24</sup>

Included in its Opinion were recommendations that the Postal Service headquarters provide guidance to local managers to “assure that discrimination between facilities of the type prohibited by 39 U.S.C. § 403(c) does not occur.”<sup>25</sup> The Commission also advised that the Postal Service provide a separate and distinct process area in the process for evaluating the effects on the community. It also advised the Postal Service to develop a methodology to measure revenue leakage, and adequately assess discontinuance costs. Finally, the Commission advised the Postal Service to institute a post implementation review process. Unfortunately, the Postal Service has not complied with any of these recommendations. The recommendations that the Commission explicitly stated would bring the PO-101 discontinuance review process into compliance with the requirements of Title 39. Clearly there is still work to be done on the process. Accordingly, the Commission should find the Postal Service RAO Initiative and implementation of the revised PO-101 violates Section 403(c) of Title 39.

The Postal Service reliance on the Commission’s finding regarding the SBOC Initiative is misplaced for another important reason. In its brief the Postal Service omits the fact that the majority of the facilities at issue in this case are rural (2825 out of 3652), while the facilities at issue in the SBOC Initiative were located in urban and suburban locations. Leaving aside the fact that this was not the Commission’s finding in N2009-1, and the Postal Service errs by trying to apply a finding about an urban/suburban focused initiative to an initiative focused primarily on offices in rural areas and small towns. The Commission should give no weight to this argument.

## **B. The PO-101 Process Must Be Revised**

In its Initial Brief the Postal Service asserts that there has not been substantial evidence demonstrating harm that will result from the RAO Initiative. The Postal Service further claims “[t]he absence of substantial evidence in support of specific allegations of harm in intervenor testimony necessarily bears on the Commission’s consideration of the

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<sup>24</sup> Id. at 41.

<sup>25</sup> Id. at 43.

potential adverse effects of Postal Service proposals.”<sup>26</sup> To the extent that the Postal Service is arguing here that the Commission should disregard any suggestions that the RAO Initiative will result in harm to certain populations of postal customers because no intervenor has demonstrated such harm, this argument is baseless. At this time, no closures have been effectuated by the combinations RAO Initiative and PO-101 process. Therefore, no harm can possibly be shown. However, numerous intervenors, including the APWU have ably demonstrated the enormous risk of harm that could result from implementation of the RAO Initiative and discontinuance process as each currently stands.

To the extent the Postal Service is claiming there will not be harm, it is impossible for it to know that now and currently there is no process for it to make that determination in the future.. The Postal Service does not keep track of the results of any closings be they locally instituted or part of a nationwide initiative like the SBOC Initiative. The Commission recommended a post implementation review process in the SBOC Initiative decision, recognizing the clear benefits to the Postal Service of such a process. Yet, the Postal Service failed to implement this recommendation. This is a serious flaw in the discontinuance process that must be fixed. Currently, like with the process at issue under the SBOC, the Postal Service does not track and evaluate whether closing the facility actually saved the Postal Service money. It does not track and evaluate where customers of the closed facility take their postal business, be it to alternate access channels or to competitors. The Postal Service has no methodology to study revenue leakage or where PO Office box customers go when their post office is closed. Essentially, the Postal Service currently has no way of knowing if the closure aided in achieving a cheaper, more streamlined and efficient network. Nor does it have any way of knowing if it has continued to provide ready access to essential postal service as required by the Act. Without this knowledge the Postal Service is operating in the dark, taking random stabs hoping that something sticks. This is not the way to operate a business. Moreover, this is not the way a provider of a valuable public service should behave. Initiatives such as the RAO Initiative may actually do more harm than good, not just to postal customers but also to the Postal Service. In this time

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<sup>26</sup> USPS Initial Brief at 28.

of financial pressure and limited resources, the Postal Service must have a way to track initiatives to see what works and what does not so that it does not waste valuable resources, including the public's good will, on initiatives that will not save money and will drive customers away from the Postal Service. Therefore, the Commission should recommend that the Postal Service implement a robust post implementation as further explained in our Initial Brief.

### **III. Conclusion**

For the reasons explained above and in our Initial Brief, the Commission should reject the arguments of Valpak and the Postal Service and find that the RAOI Initiative violates the policies of Title 39.

Respectfully submitted,

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